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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/926,094	11/12/2003	Jack Goodman	114122.0115US	5305

7590 06/23/2005

Blank Rome Comisky & McCauley
The Farragut Building
Suite 1000
900 17th Street NW
Washington, DC 20006

EXAMINER

REDDING, DAVID A

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 06/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/926,094	Applicant(s) GOODMAN ET AL.	
	Examiner David A. Redding	Art Unit 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 and 31-49 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 7, 31-33, 35-38, 40, 41, 43 and 48 is/are rejected.
- 7) ☒ Claim(s) 3-6, 8-28, 34, 39, 42, 44-47 and 49 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

70

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language;

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,7,31,35,36,40,41,43,48, are rejected under 35 U.S.C. 102(e) as being anticipated by USP 6,303,389 B1 (Levin et al.).

Levin et al. disclose a system and methods for providing assay cassettes that are employed during rapid flow-through binding assays. Figures 1 and 5 illustrates the embodiment which is considered to read on the claimed invention. Figure 1 shows a cartridge (10) comprising a flow through device in the form of a membrane (16) having a first side, second side and an array of micro channel passages extending throughout the membrane, a chip holder for holding the flow through device in the form of a filter pad (18), a flow surface formed between the filter pad (18) and the membrane (16), a test fluid chamber defined between the membrane (16) and the filter pad (18), a first port (22). The device further comprises a base (20) as defined in claim 2.

Art Unit: 1744

The flowthrough passages in the filter pad (18) are considered to constitute the claimed second port (claim 7). The filter pad (18) alone or in combination with the bottom plate are considered to be equivalent to the claimed chip holder (claim 31,36). The patent further discloses that the cassette (10) is used with a device for performing a rapid flow-through assay as described in application 09/045,630, now patent 6,194,160 (Levin) (col.7, lines 40-44), which is considered to read on the claimed fluidic station (40,41,43).

Claims 31,32,33,37,38, are rejected under 35 U.S.C. 102(b) as being anticipated by USP 4,294,924 (Pepicelli et al.).

The '924 patent discloses a dish (10) which is considered to read on the claimed holder. The dish comprises a support (10 having a flow surface on the interior side thereof which is capable of forming a chamber and to provide a uniform flow. The opening to the dish is considered to constitute a first port. The flow surface is angled as defined in claim 32. The first portion of the flow surface is the upper left side and the second portion is the bottom of the dish. The dish comprises a first shelf (24,26) which is capable of supporting a seal and a second shelf between the first shelf and the outer upper wall (32) capable of functioning as claimed.

Allowable Subject Matter

Claims 3-6,8-28,34,39,42,44-47,49, are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 1744

As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A. Redding whose telephone number is 571-272-1276. The examiner can normally be reached on Mon.-Fri. 6:00 - 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kim can be reached on 571-272-9178. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David A Redding
Primary Examiner
Art Unit 1744

DAR